

## 11.0.0 ASSETS

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### 11.1.0 Introduction

Apply the collection and verification (37.0.0) policies expressed in this section only to EBD MA cases.

Do not count income as an asset in the month it was received when determining the countable asset amount.

**Example.** Mr. Johnson has \$2,600 in his checking account for the month of March. Of that amount, \$700 is unearned income that he received in March. His countable asset amount is \$1,900.

### 11.2.0 Availability

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, **and**
2. The owner has a legal right to the money obtained from sale of the asset, **and**
3. The owner has the legal ability to make the money available for support and maintenance.

Consider an asset as unavailable if:

1. The client lacks the ability to provide legal access to the assets, **and**
2. No one else can access the assets, **and**
3. A process has been started to get legal access to the assets.

An asset is unavailable when the owner or owner's representative documents that the asset will not be available for 30 days or more.

**Example.** Sylvia has life insurance that she cannot convert to cash within 30 days. She has a letter from the insurance company stating when she will receive the money. It becomes available the day she receives the money. Schedule an eligibility review, for no later than the 60th day after the date of application.

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#### 11.2.1 Real Property

Nonexempt real property (11.8.0) is unavailable when: \_\_\_\_\_

1. The person who owns the property lists it for sale with a realtor. See 11.9.0. \_\_\_\_\_
2. A joint owner who is outside the fiscal test group refuses to sell the property.

When the client is a co-owner of the property with someone outside the fiscal group, you must determine whether s/he is a **joint owner** or an **owner-in-common**.

Joint ownership has a right of survivorship. That is, upon the death of one joint owner, the other inherits the share of the deceased. A joint owner's share may not be sold without forcing the sale of the entire property.

Ownership-in-common has no right of survivorship. An owner-in-common may bequeath his/her share of the property to anyone s/he chooses. S/he may also sell his/her share during his/her lifetime.

If an institutionalized person owns property that's unavailable because it's listed for sale, s/he can use some of her income to maintain the property until it is sold. Allow minimal heat and electricity costs so as to avoid physical damage to the property while it is waiting to be sold. Also allow a minimum amount of property insurance coverage. But do not allow taxes and mortgage payments; they must be paid from the proceeds of the sale.

Allow the maintenance costs for as long as the person is making a good faith effort to sell the property, but in no case for longer than six months.

#### 11.3.0 Separate & Mixed Assets

When an MA group keeps an exempt asset in:

1. A separate account or an account with other exempt assets, exempt the exempt asset:
  - a. Indefinitely, for example, most payments to Native Americans (15.2.1), **or**
  - b. For as long as the exemption can be applied to the asset, for example, EITC (11.7.8), which is exempt only through the month following the month of receipt.

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### 11.3.0 Separate & Mixed Assets (cont.)

2. An account mixed with other assets, some of which are non-exempt, exempt the exempt asset:
  - a. For six months from the date the exempt asset was mixed with the non-exempt assets, **or**
  - b. If the exempt asset has been prorated as income, exempt it for the period over which it is prorated.

### 11.4.0 Account

Account means a deposit of funds with a financial institution (bank, savings and loan, credit union, insurance company, etc.).

#### 11.4.1 Joint Accounts

Apply the following policy to savings, checking, NOW and share accounts, certificates of deposit, and similar arrangements where the holders have equal access to the funds. Assign an equal share available to each client who is a holder of the joint account. "Equal share" means an amount in proportion to the number of account holders. If there are three holders, an equal share means each gets 1/3 of the account's balance. Prorate interest income from joint assets among the owners of the asset.

Do not apply the joint account policy to the following accounts:

1. Accounts established for business, charitable or civic purposes.
2. Trust or restricted accounts. A trust or restricted account is one in which the person named as holder of the account has no access or limited access to the funds in it.
3. Special purpose accounts. A special purpose account has at least one holder acting as the power-of-attorney, guardian or conservator for at least one of the other holders of the account.
4. Convenience accounts. The following policy applies only to joint accounts of persons who are not married to one another:

When a person's name appears on a joint account, assume s/he is part owner of the assets in the account. Inform the client that s/he has a right to present evidence showing s/he did not deposit any assets into the account.

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#### 11.4.1 Joint Account (cont.)

To show that s/he does not own or co-own any assets in the account, s/he must present all of the following:

1. A signed statement explaining:
  - a. Who owns the funds in the joint account.
  - b. The reason for establishing it.
  - c. Who made the deposits to the account.
2. A signed corroborating statement from the co-holder of the account.
3. A copy of the change in the account which removes his/her name or restricts his/her access.

If the co-holder is incompetent or a minor, obtain a statement from a knowledgeable third party. Then, decide whether to accept the person's statement. If you decide s/he is not a co-holder, apply the decision retroactively as well as prospectively. When no third party is available, document the reason.

#### 11.4.2 Jointly Held Real Property

Apportion an equal share of any real property or any income derived from real property to each owner. To apportion, the equity or income must be available.

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### 11.5.0 Burial Assets

#### 11.5.1 Burial Trusts

Exempt all burial trusts made in Wisconsin that are irrevocable by Wisconsin law, as noted in the trust agreement. If made in another state, exempt all that are irrevocable by the laws of that state. Refer any question about any state's law to your corporation counsel.

Interest and dividends are irrevocable if they accrue to irrevocable trusts and if the trust agreement specifies they are irrevocable. If the interest or dividends are irrevocable, exempt them. If interest or dividends are revocable, count them.

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In non-spousal Impoverishment EBD Medicaid cases, each fiscal group member may have one or more irrevocable burial trusts, the total value of which may not exceed \$2,500. (See 23.4.0 for information about burial assets for persons with a community spouse.)

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### 11.5.2 Burial Insurance

A burial insurance policy is a contract whose terms preclude the use of its proceeds for anything other than payment of the insured's burial expenses. Burial insurance is not a product licensed for sale in Wisconsin, but is available in other states.

A burial insurance policy is unavailable if:

1. It includes language that says it is irrevocable, **and**

**Note:** If a policy has a cash surrender value to which the client has access, the policy is not burial insurance, it is life insurance.

2. It states that all of the proceeds must be used for burial expenses.

**Note:** If a burial policy calls for any excess proceeds to be paid to a secondary beneficiary, it is life insurance, not burial insurance. Similarly, if a policy calls for the proceeds to be paid to a private party who is expected but not legally required to use the funds for the burial costs of the insured, the policy is life insurance.

The purchase of a burial insurance policy that meets the above conditions is not a divestment because the purchaser is presumed to receive fair market value.

### 11.5.3 Life Insurance Funded Burial Contracts (LIFBC)

A life insurance funded burial contract involves a person purchasing a life insurance policy on his or her own life and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a third party, generally a funeral provider. The purpose of the assignment is to fund a burial contract.

Death benefits which exceed the actual costs of burial expenses must be paid to the insured's estate or the insured's beneficiary.

A burial contract that is funded with a life insurance policy must be in writing and must contain all of the following:

- Name of funeral home and the insurer.
- Statement of funeral goods and services.

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### 11.5.3 Life Insurance Funded Burial Contracts (LIFBC) (cont.)

- Effect of canceling or surrendering the insurance policy.
- Effect of changing the assignment of the policy proceeds.
- Nature and extent of any price guarantees for goods and services.

The assignment option (revocable or irrevocable) chosen by the customer impacts the determination of countable asset and/or divestment amount.

#### 11.5.3.1 *Irrevocable Assignment of LIFBC*

An irrevocably assigned LIFBC is an unavailable asset because the client no longer owns it.

If a client has chosen irrevocable assignment of his/her LIFBC the burial space exemption (11.5.4) may apply, depending on the nature of the contract. Any portion of the contract that represents the purchase of a burial space is exempt and has no effect on the burial funds exclusion (11.5.5).

If the face value of the burial funds portion of the contract exceeds \$1,500, it offsets the burial fund exclusion described in 11.5.5.

If the face value of the burial funds portion does not exceed \$1,500, determine the cash surrender value (CSV) and proceed in the following order:

1. Apply the CSV to burial spaces.
2. Apply the burial fund logic described in 11.5.5 to any remaining CSV.
3. Apply the CSV to any itemized goods or services, not accounted for by items #1 and #2 above, purchased at fair market value.
4. Apply divestment policy to any remaining CSV (14.13.2).

**Example.** Mr. Atkins has irrevocably assigned the ownership of his life insurance policy to a funeral home to fund a burial contract. The face value and the cash value of the LIFBC is \$3,000. The Statement of Funeral Goods and Services shows \$3,000 for the pre-arrangement of the funeral, of which \$1,300 is designated for a casket and \$1,700 for funeral expenses (services and cash advances for such things as flowers and the obituary). The \$1,700

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### 11.5.3.1 *Irrevocable Assignment of LIFBC (cont.)*

funeral expense portion reduces the \$1,500 burial fund exclusion (11.5.5), and so \$1,500 of this LIFBC will be considered his exempt burial fund. The \$1,300 casket does not reduce the burial fund exclusion (11.5.5) and is not a countable asset because it is a purchase of a burial space.

Because the LIFBC was assigned irrevocably, determine if Mr. Atkins is receiving other goods or services at fair market value for the remaining \$200 designated for funeral expenses. If he is not receiving goods or services at fair market value, consider the remaining \$200 divestment (14.13.2).

If the face value of the LIFBC exceeds the total amount shown on the Statement of Funeral Goods and Services, determine the cash value and apply the divestment policy (14.13.2). Any portion of an irrevocably assigned LIFBC for which no goods and services are received at fair market value is the divested amount.

**Example.** Mr. Atkins has irrevocably assigned the ownership of his life insurance policy to a funeral home to fund a burial contract. The face value and the cash value of the LIFBC is \$3,200. The Statement of Funeral Goods and Services shows \$3,000 for the pre-arrangement of the funeral. A divestment in the amount of \$200 occurred, because the cash value of the LIFBC exceeds the expenses of the pre-arrangement of the funeral.

### 11.5.3.2 *Revocable Assignment of LIFBC*

When a client has chosen revocable assignment of their LIFBC, use the following procedures to determine the countable asset amount.

Identify all other burial assets and life insurance policies the customer may have. Use burial fund logic (11.5.5) to determine what portion of the LIFBC is a countable asset.

The value of the burial contract is equal to the cash surrender value (CSV) of the life insurance policy. If the face value of all life insurance policies is \$1,500 or less, exempt the CSV under the life insurance exclusion. If the face value of all policies exceeds \$1,500, treat the CSV of the policy according to the burial funds exclusion, if applicable.

If one or more burial spaces are included in the statement of funeral goods and services, the burial space exclusion (11.5.4) does not apply. This is because the provider has not

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### 11.5.3.2 *Revocable Assignment of LIFBC (cont.)*

received payment and therefore no purchase of burial space(s) has been made.

**Example.** Mrs. White has a revocably assigned LIFBC and no other burial assets or life insurance policies. The face value of the LIFBC is \$3,000 and the CSV is \$1,700. The total value of the LIFBC is equal to the CSV of \$1,700.

The burial contract designates \$1,300 for a casket and \$1,700 for funeral expenses. The burial space exclusion (11.5.4) does not apply to Mrs. White's contract, but \$1,500 of the CSV is exempt under the burial funds exclusion (11.5.5). The remaining \$200 of the CSV is a countable asset.

**Example.** Mrs. White has a revocably assigned LIFBC. She additionally has a burial plot already paid for and a whole life insurance policy with a face value of \$1,500 and cash surrender value (CSV) of \$1,000. The face value of the LIFBC is \$3,000 and the CSV is \$1,700. The total value of the LIFBC is equal to the CSV of \$1,700.

The burial contract designates \$1,300 for a casket and \$1,700 for funeral expenses. The burial space exclusion (11.5.4) does not apply to Mrs. White's contract. No portion of the CSV is exempt under the burial funds exclusion (11.5.5), because the face value of her whole life insurance policy is \$1,500. The burial plot is exempt, because it is paid for. The entire value of the LIFBC (\$1,700) is a countable asset.

### 11.5.4 Spaces

Burial space exemptions apply only to EBD fiscal group members. Burial space exemptions include the following, if they have been paid for:

1. Plots, vaults, caskets, crypts, mausoleums, urns, or other repositories customarily used for the remains of deceased persons, **and**
2. Necessary and reasonable improvements upon the burial space with items such as headstones, markers, plaques, **and**
3. Arrangements for opening and closing the gravesite.

Exempt multiple spaces of any value under the following conditions:



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#### 11.5.4 Spaces (cont.)

1. The space(s) must be owned by the EBD person, that person's spouse, or, when the EBD person is a minor, by the minor's parents.
2. Both a plot and a mausoleum space cannot be exempted for the same person.
3. Each person may have more than one type of space.
4. The space(s) must be for the use of the client or one of the following:
  - a. Spouse.
  - b. Minor or adult natural, adoptive, or stepchild.
  - c. Brother or sister.
  - d. Natural or adoptive parent.
  - e. Spouse of any of the above.

**Example.** Bob, age 12, lives with his parents and is tested for EBD MA. His father owns five burial plots and spaces: #1 is for Bob, #2 and #3 are for his parents, #4 is for his older brother, who does not live at home, and #5 is for Bob's uncle. All the plots and spaces are exempt except #5.

#### 11.5.5 Burial Funds

Burial fund exemptions apply only to EBD fiscal group members. Burial funds are funds that are set aside for burial expenses. EBD clients and their spouses may each have one burial fund.

To find the amount of a burial fund that can be exempted, add:

1. The face value of the person's irrevocable burial trusts.
2. The face value of all of his/her life insurance policies whose cash value is exempt.
3. The face value of his/her exempt burial insurance (11.5.2).
4. The cash surrender value of revocably assigned life insurance funded burial contracts (LIFBC) (11.5.3.2).
5. The burial funds portion of irrevocably assigned LIFBC (11.5.3.1).

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### 11.5.5 Burial Funds (cont.)

If the total value of above items is \$1,500 or more, do not exempt any more burial funds. If the total is less than \$1,500, subtract the total from \$1,500. The result of this subtraction is the amount of his/her burial fund total that is exempt.

**Example.** Mrs. Smith, age 74, applies for MA. She has a \$1,600 savings account designated as a burial fund, a \$1,300 irrevocable burial trust, and two life insurance policies. The combined face values of the life insurance policies total \$900. Add up the values of exempted assets. The irrevocable burial trust is exempt. The life insurance cash values are exempt when the total of their face values does not exceed \$1,500.

\$1,300	Irrevocable burial trust
<u>+900</u>	Face value life insurance
\$2,200	

The total is more than \$1,500 so no portion of the burial fund (savings account) is exempt.

**Example.** This time, Mrs. Smith, in addition to her \$1,600 savings account designated as a burial fund, has a \$300 irrevocable burial trust and two life insurance policies with a combined face value of \$900.

\$ 300	Irrevocable trust
<u>+ 900</u>	Face value life insurance
\$1,200	

The total is less than \$1,500, so determine what portion of Mrs. Smith's savings account can be exempted as a burial fund.

\$1,500	Maximum burial fund exclusion
<u>- 1,200</u>	
\$ 300	

Mrs. Smith can exempt \$300 from her savings account as a burial fund. The remaining \$1,300 is an available asset.

Anyone claiming a burial fund must sign a statement identifying the fund's location, type, amount, and account number. The statement must specify the month and year in which s/he first intended to set the fund aside for burial. The fund can be excluded retroactively back to the first day of the specified month, but no earlier than November 1, 1982. It loses its exemption if it is used for anything other than the person's burial.

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#### 11.5.5 Burial Funds (cont.)

The fund set aside for burial must be identifiable, but not necessarily segregated from other funds.

#### 11.6.0 Non-Burial Trusts

A trust is any arrangement in which a person (the "grantor") transfers property to another person with the intention that the person (the "trustee") hold, manage, or administer the property for the benefit of the grantor or of someone designated by the grantor (the "beneficiary").

The term "trust" includes any legal instrument or device or arrangement, which, even though not called a trust under state law, has the same attributes as a trust. That is, the grantor transfers property to the trustee and the grantor's intention is that the trustee hold, manage, or administer the property for the benefit of the grantor or of the beneficiary.

The grantor can be:

1. The MA client.
2. His/her spouse.
3. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse. This includes a power of attorney or a guardian.
4. A person, including a court or an administrative body, acting at the direction or upon the request of the client or the client's spouse. This includes relatives, friends, volunteers or authorized representatives.

#### 11.6.1 Trust Principal

The trust principal is the amount placed in trust by the grantor plus any trust earnings paid into the trust and left to accumulate.

#### 11.6.2 Revocable Trusts

A revocable trust is a trust which can be revoked, canceled or modified by the grantor or by a court. A trust which is called irrevocable, but which will terminate if some action is taken by the grantor, is considered a revocable trust.

The trust principal of a **revocable** trust is an **available asset**.

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#### 11.6.3 Irrevocable Trusts

An irrevocable trust is a trust that cannot, in any way, be revoked by the grantor.

The trust principal of an **irrevocable** trust is **not an available asset**.

**Note:** If the grantor is an institutionalized person, or someone acting on behalf of an institutionalized person, setting up an irrevocable trust may be a divestment (14.13.2).

#### 11.6.4 Special Needs Trust

Disregard special needs trusts whose sole beneficiary is under age 65 and totally and permanently disabled (under SSI program rules) if it meets these conditions:

1. The trust must be established for the sole benefit of the disabled person by his/her parent, grandparent, legal guardian or a court, **and**
2. Contain a provision that, upon the death of the beneficiary, the Wisconsin MA program will receive all amounts remaining in the trust not in excess of the total amount of MA paid on behalf of the beneficiary.

The exception continues after the person turns 65, provided s/he continues to be disabled. However, a grantor cannot add to the trust after the beneficiary turns 65. Anything added to the trust after the beneficiary turns 65 is a divestment. Money added before the beneficiary turns 65 is not a divestment.

#### 11.6.5 Pooled Trusts

Disregard pooled trusts for disabled persons. They must meet the following conditions:

1. Established and managed by a non-profit association.
2. A separate account is maintained for each beneficiary. For purposes of investment and management, the funds from separate accounts may be pooled together.
3. The sole beneficiaries are persons determined disabled under SSI program rules.
4. Contain a provision stating that upon the death of the beneficiary the trust will use remaining funds in the account to reimburse the Wisconsin MA program.

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### **11.7.0 Liquid Assets**

#### 11.7.1 Personal Property

Personal property in general includes money, goods, cause of action, damages for breach of contract, and evidences of debt. Value of personal property means market value. Deduct all encumbrances to arrive at a final evaluation. Count household effects, libraries, and jewels only if of unusual value.

#### 11.7.2 Loans

If an AG member receives a loan and it is available for current living expenses, count it as an asset. Do this even if there is a repayment agreement. If it is not available for current living expenses, disregard it.

If an AG member makes a loan (except a land contract), treat the repayments as follows:

1. Count any repayments toward the principal of the loan, whether it is a full payment, a partial payment, or an installment payment, as an asset.
2. Count any interest payment on the loan as unearned income in the month received, and as an asset in the months following the month it was received.

##### *11.7.2.1 Reverse Mortgage*

A reverse mortgage loan is a loan, or an agreement to lend, which is secured by a first mortgage on the borrower's principal residence. The terms of the loan specify regular payments to the borrower. Repayment (through sale of the residence) is required at the time all the borrowers have died, or when they have sold the residence or moved to a new one.

Treat reverse mortgage loan payments to the borrower as assets in the month received and thereafter. Do not count undisbursed funds (not yet paid to the borrower) as assets. They are considered equity in the borrower's residence.

#### 11.7.3 HUD Payments

Disregard reimbursements resulting from federal regulatory changes in computing U.S. Department of Housing and Urban Development (HUD) housing rent as income in the month paid and assets in the next month.

#### 11.7.4 Annuities

An annuity is a written contract under which, in return for payment of a premium or premiums, an individual will receive

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### 11.7.4 Annuities (cont.)

a series of payments at regular intervals for a specified time period.

The annuitant is the person entitled to the payments. A purchaser can name himself/herself or another person as the annuitant. The purchaser may also name a beneficiary to receive annuity payments after the annuitant's death.

#### 11.7.4.1 Accumulation Phase

The accumulation phase of an annuity is the period when the purchaser puts money into the annuity. During the accumulation phase, an annuity is an available asset because the annuitant can cash it in for its cash value.

Cash value (also known as surrender value) equals:

1. Total deposits made to the annuity.  
+
2. Earnings on the deposits not previously paid out.  
-
3. Withdrawals and surrender costs charged for withdrawal.

In determining the cash value, do not deduct income tax withheld or tax penalties for early withdrawal.

#### 11.7.4.2 Pay-Out Phase

The pay-out (annuitization) phase begins at the time payments start going to the annuitant in accordance with the settlement option.

The settlement option specifies the way the funds from the annuity will be paid out. It involves choosing the amount of each payment, how often payments will be made, and the length of time over which the payments will be made.

An annuity becomes an unavailable asset on the date the settlement option is made final. This means even if the payment starts months later, it is unavailable on the date the settlement option is made final.

### 11.7.5 Life Insurance

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions.

Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

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11.7.5 Life Insurance (cont.)	<p>Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value of all policies owned by each person exceeds \$1,500. Do this calculation for each EBD person. In determining the face value, do not include any life insurance which has no cash value.</p> <p>Life insurance policies always have a face value, but do not always have a cash value. Term life insurance is limited to a defined time period as stated in the policy and does not usually have cash value. Group life insurance is usually term insurance and usually has no cash value. An endowment insurance plan generally has cash value.</p>
11.7.6 Endowment to CCRC	<p>Frequently, in order to enter a continuing care retirement community (CCRC), a person must pay a large, one-time entrance fee as an endowment. In exchange for this and, sometimes, an additional monthly payment, the person is promised care for the rest of his/her life, unless s/he chooses to move.</p> <p>Endowments such as this are unavailable assets.</p>
11.7.7 Income Tax Refunds	<p>Federal and state income tax refunds are available assets.</p>
11.7.8 Earned Income Tax Credit (EITC)	<p>Disregard all Earned Income Tax Credit (EITC) payments in the month received and in the month after receipt.</p> <p>After the “month received” and the “month after receipt” have passed, count the EITC payment as an available asset.</p>
11.7.9 Vehicles	<p>A vehicle is any:</p> <ol style="list-style-type: none"><li>1. Passenger car or other motor vehicle, <b>and</b></li><li>2. Used to transport persons or goods, <b>and</b></li><li>3. Owned by someone in the fiscal test group.</li></ol> <p>In all cases, log skidders (used to move logs out of the woods to market) are exempt vehicles.</p>

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### 11.7.9.1 *Determining Equity Value*

Equity value is:

1. The vehicle's wholesale value as given in a standard guide on motor vehicle values (blue book), or the value as estimated by a sales representative at a local dealership,
2. Minus any encumbrances (loans or mortgages) that are recorded on the vehicle's title as liens.

Do not increase a vehicle's value by adding the value of low mileage or other factors, such as optional equipment or apparatus for the handicapped.

Occasionally, a vehicle has more than one owner. Some of the owners may be in the fiscal test group, others not. To find what the fiscal test group's equity value in the vehicle is, do the following:

1. Find the vehicle's wholesale value.
2. Subtract the encumbrances (loans or mortgages) that are recorded as liens on the vehicle's title. The result is the equity value.
3. Divide the equity value by the total number of owners.
4. Add up the prorated equity values of the owners who are in the fiscal test group. The result is the fiscal test group's equity value in the vehicle.

### 11.7.9.2 *When to Count, When to Exempt*

Count vehicle values as follows:

For EBD categorically and medically needy MA, when the fiscal group owns:

1. One vehicle, exempt it if it meets one of the following conditions:
  - a. Necessary for employment.
  - b. Necessary for medical treatment of a specific or regular medical problem.
  - c. Modified for operation by or transportation of a handicapped person.



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### 11.7.9.2 *When to Count, When to Exempt (cont.)*

d. Necessary because of climate, terrain, distance or similar factors to provide transportation to perform essential daily activities.

2. One vehicle and it does not meet any of the above conditions, exempt it if its fair market value does not exceed \$4,500. Fair market value in excess of \$4,500 counts toward the asset limit.
3. Two or more vehicles, count the full equity value of all vehicles except for the one vehicle that meets the conditions of either #1 or #2 above.

### 11.7.10 Property Settlement

Money received as a property settlement is always an asset regardless of whether it is paid in one payment or in installments. It is never income.

### 11.7.11 Lump Sums

Lump sum payments (rather than recurring payments) from such sources as insurance policies, sale of property, Railroad Retirement, Unemployment Compensation benefits, and retroactive corrective financial aid payments are counted as an asset when received.

#### 11.7.11.1 *Retroactive SS Payments*

Do not count a retroactive social security or SSI payment as an asset for six months, beginning with the month the payment is received. A retroactive payment means it is paid later than the month in which it is due. After six months, treat any remaining available portion as an asset.

During the six months in which it is not counted, the unspent portion of the payment can be mingled with other funds, provided it can be distinctly and separately identified.

### 11.7.12 Land Contract

When a land contract is executed, the purchaser builds equity in the property through the payments s/he makes. The seller keeps legal title to the property until it is paid for. The seller's interest in the land contract is personal property, not real property.

The seller's legal title to the property can be sold and converted to cash for support and maintenance. To determine the value of the seller's legal interest in the land contract:

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#### 11.7.12 Land Contract (cont.)

1. Find the original sale price or the fair market value (as determined by a qualified real estate appraiser). Of these two amounts choose the one which more accurately reflects the contract's true value on the date it was originated.
2. From this amount subtract:
  - a. Payments which the purchaser has already made on the principal.

**Example.** The fair market value of the land contract is \$50,000. The purchaser has already paid \$10,000 on the principal.

\$ 50,000	Fair Market Value
<u>-10,000</u>	Already Paid
\$ 40,000	Outstanding Balance

- b. Encumbrances on the contract, for example, a personal loan.
  - c. The amount lost to a discount.

**Example.** Milton Rokeach wants to buy up Mr. Graham's land contract. He asks for a 10% discount.

\$40,000	Outstanding Balance
<u>- 4,000</u>	10% Discount Given by Mr. Graham to Milton Rokeach
\$36,0000	Value of Mr. Graham's Interest in the Land Contract

3. The remainder, after subtracting a., b., and c. from the original sale price, is the value of the seller's interest in the land contract. Count this as an available asset.

If the land contract is not an available asset, the person must document its unavailability by showing that either:

1. The terms of the land contract prohibit its sale, **or**
2. No one is willing to purchase it from him/her.

When the claim is that no one will purchase the land contract, it must be offered for sale to at least one individual or organization active in the land contract purchasing market. A written statement from the individual or organization that they

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11.7.12 Land Contract (cont.)	<p>will not buy it is sufficient to establish the land contract as an unavailable asset.</p> <p>Notice that if it has been offered only to an individual or organization that never purchases land contracts, it remains an available asset.</p>
11.7.13 Mortgage	<p>Treat any mortgage held by and owed to a client the same as a land contract.</p>
11.7.14 Wisconsin Higher Education Bonds	<p>The State of Wisconsin sells Wisconsin Higher Education Bonds to the public as a way to save for higher education. To determine their net value, subtract broker's fees from market value.</p> <p>The bonds may be sold back to the State, under certain time restraints:</p> <ol style="list-style-type: none"><li>1. Before the maturity date, a portion of their value is withheld. The amount withheld equals the school's tuition and fees. Any excess goes to the person.</li><li>2. On or after the maturity date, the value is the total amount received.</li></ol> <p>The bonds may be sold on the "secondary" bond market at any time. Since they can be disposed of on the market with no time limit they are an available asset. To determine their net value, subtract broker's fees from market value. (Verify the amounts through a broker.)</p>
11.7.15 Wartime Relocation of Citizens	<p>Disregard restitution paid under PL 100-383 to Japanese-Americans and Aleuts or their survivors who were interned or relocated during World War II.</p>
11.7.16 Agent Orange Settlement Fund	<p>Disregard payment received from the Agent Orange Settlement Fund or any other fund established in settling "In Re: Agent Orange product liability Settlement Fund litigation, M.D.L. No. 381 (E.D.N.Y.)". Disregard as income in the month received and as an asset thereafter.</p>

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### 11.7.17 Radiation Exposure Compensation Act

Disregard payments from any program under the Radiation Exposure Act (PL 101-426) paid to persons to compensate injury or death resulting from exposure to radiation from nuclear testing (\$50,000) and uranium mining (\$100,000).

When the affected person is dead, payment is made to his/her surviving spouse, children, parents, or grandparents. The federal Department of Justice reviews the claims and makes the payments.

Apply this disregard retroactively to October 15, 1990 and continue to disregard the payment for as long as it is identified separately.

### 11.7.18 Institutionalized Person's Assets

An institutionalized person's personal allowance may accumulate to where s/he may lose eligibility due to excess assets. To prevent this, s/he can spend money on personal needs or make a refund to the agency. If s/he chooses to refund the agency, calculate what a year's accumulation will be and work out a payment schedule. When the payments equal MA benefits received, have the person stop the payments until s/he receives more benefits.

If the person refuses to refund, discontinue eligibility when the asset limit is exceeded. S/he remains ineligible until the assets are again at or below the limit. At that point s/he may reapply.

These instructions apply to all institutionalized MA recipients, whether certified by your agency or by the Social Security Administration.

### 11.7.19 Blind/Disabled Set-Aside

Disregard the following for a blind or disabled person:

1. Assets essential to the continuing operation of her/his trade or business.
2. Other income-producing property.
3. Assets set aside to carry out an approved self-support plan (15.3.2.2). The set-aside must be segregated from other funds. Disregard interest that accumulates, provided the set-aside does not exceed the provisions of the plan.

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### 11.7.20 Replacing and Repairing Exempt Assets

Vehicles and homes are examples of exempt assets. If an exempt asset is lost, stolen, or damaged, disregard any cash (and interest earned) or in-kind replacement received from any source to repair or replace it.

The cash or in-kind payment must be used within nine months of the date it is received. After the end of the ninth month, count as an asset leftover cash not used for the repairs or replacement.

Extend the nine-month period for up to another nine months if the person has good cause for not repairing or replacing the thing. Good cause means circumstances beyond the person's control to prevent repair or replacement. This includes not being able to contract it out. When there is good cause, count as an asset any amount not used for repairs or replacement. Begin with the month after the end of the extension.

If, during a good cause extension, the person no longer intends to replace or repair the exempt asset, count the amount for replacement or repair as an asset. Begin with the month the person reports his/her change of intent.

### 11.7.21 Retirement Benefits

Retirement benefits are work-related plans for providing income when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans.

Treat as an asset all retirement funds that are available for withdrawal by a fiscal group member. Count the value of the individual retirement accounts (IRA), Keoghs, etc. **after** applying any penalty reduction for early withdrawal, (e.g. the amount the client would actually receive if they cashed it in). This does not include tax penalties.

Do not count retirement funds as an asset if s/he:

- Is an ineligible spouse in an EBD case, **or**
- Has to quit a job to get the retirement funds, **or**
- Is receiving periodic payments from the retirement fund (15.4.4). A periodic payment is any partial payment from a retirement account. Withdrawal of the full amount from

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### 11.7.21 Retirement Benefits (cont.)

any retirement account that has never had a withdrawal made from it is not considered a partial payment.

Disregard any retirement funds or IRAs of an ineligible spouse in an EBD case. Retirement funds for this purpose are funds held in IRAs, Keoghs, etc. as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans). This includes the community spouse in spousal impoverishment cases.

Consider IRAs, Keoghs, or other retirement funds that are completely cashed in as a conversion from one asset form to another.

**Example.** Mike withdraws \$2,000 he has in an IRA, and deposits it into a savings account. Continue to treat the \$2,000 as a countable asset. This is just a conversion from one form of an asset to another.

If a client has multiple IRA's, Keogh's, etc. consider each of these separately.

**Example.** Mark has three IRAs. He is receiving periodic payments from one, but not from the other two. Treat the periodic payments as income in the month received (15.4.4). Treat any interest that Mark receives as income in the month received. Mark's IRAs that he is not receiving periodic payments from are considered available assets.

### 11.7.22 Gifts

A gift is something a person receives which is not repayment for goods or services the person provided and is not given because of a legal obligation on the giver's part. To be a gift, something must be given irrevocably (that is, the donor relinquishes all control).

Treat non-cash gifts as an asset, as you would an asset of a similar type.

A cash gift is **income** in the month of receipt. It is an **asset** in the months after the month of receipt. Disregard cash gifts (such as for birthdays, graduation, and Christmas) that total \$30 or less, for each assistance group member, for each calendar quarter.

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11.7.23 U.S. Savings Bonds	Count the cash value of a U.S. Savings Bond unless it is unavailable. A bond is unavailable only if the MA group proves it tried to cash the bond and was refused.
11.7.24 Zebley Payments	Disregard all SSI payments received by anyone as a result of the Zebley v. Sullivan decision. Do not count it as income or a lump sum in the month received. Do not count it as an asset even if the family keeps the money and does not spend it.
11.7.25 Indian Judgment Fund Purchases	<p>Disregard assets purchased with Indian judgment funds (15.2.1, #10). But do not disregard:</p> <ol style="list-style-type: none"><li>1. Proceeds from the sale of these initial purchases.</li><li>2. Subsequent purchases made with the proceeds from the sale of these initial purchases.</li></ol>
11.7.26 Payments to Nazi Victims	Disregard payments made under PL 103-286 to victims of Nazi persecution.
11.7.27 Spina Bifida Child	Disregard payments made under PL 104-204 to any child of a Vietnam veteran for any disability resulting from the child's spina bifida.
11.7.28 Uniform Gifts to Minors Act	Count funds held in an account for the benefit of a minor that are the result of transfers under the Uniform Gifts to Minors Act. This act is also called the Uniform Transfers to Minors Act. The funds are available when determining eligibility for the minor unless a court determines otherwise.
11.7.29 Individual Development Accounts (IDA) Programs	Individual Development Accounts (IDA) are restricted accounts owned by low-income people. The IDA program provides matching funds for buying a home, starting a business, or post-secondary education. Client savings and interest are a countable asset if the IDA was established using the Assets for Independence Act or Refugee Assistance Act funds. However, if W-2 or Community Reinvestment funds support the IDA program, the assets are exempt.

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### 11.8.0 Real Property

Real property means land and most things attached to the land, such as buildings and vegetation.

#### 11.8.1 Home/Homestead Property

A home is a place of abode and lands used or operated in connection with it. In urban situations the home usually consists of a house and lot. A home can consist of a house and more than one lot. As long as the lots adjoin one another, they are considered part of the home.

Homestead property may have more than one building or house on it. This applies to urban home owners as well as farm families. In farm situations the home consists of the house and buildings together with the total acreage property upon which they are located that is considered a part of the farm. There will be farms where the land is on both sides of a road and considered a part of the home.

##### 11.8.1.1 Multiunit Dwelling

When a MA fiscal group member lives in one unit of a multi-unit dwelling and owns all of the units, exempt all of the units and the property they are on. Consider the whole multiunit dwelling as the group member's home.

##### 11.8.1.2 Non-Motorized Trailer Homes

A non-motorized trailer home is considered real property (11.8.0), regardless of whether or not the client owns the land that it is on. Consider the non-motorized trailer home:

- Home property (11.8.1) if the client currently lives in it or had lived in it before entering an institution, **or**

If the client owns the land that the non-motorized home is sitting on, consider it and any other buildings on that land as part of the homestead.

- Non-home property if the client does not live in it or had not lived in it prior to entering an institution.

If the non-motorized trailer home is listed for sale, it is considered unavailable (11.2.0).

##### 11.8.1.3 Exempt Home Property

Although home property is an exempt asset under the conditions described in this subsection, there are limits on divesting home property (14.2.3.1).



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### 11.8.1.3 *Exempt Home Property (cont.)*

**Non-Institutionalized Person.** For a person who is not residing in an institution, the home is exempt as long as the person resides in it, or intends to return to it. There is no time limit for an intended return. The home remains exempt even if the person rents out part of it while s/he continues to reside there.

**Institutionalized Person.** When a person resides in an institution, the home is exempt if one of the following conditions is met:

1. His/her spouse or dependent relative resides in the home.

The dependency of the relative may be of any kind, such as financial or medical.

The relative may be father, mother, daughter, son, grandson, granddaughter, in-laws, stepmother, stepfather, stepson, stepdaughter, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, stepsister, half-sister, half-brother, niece, nephew, or cousin.

2. The institutionalized person expresses his/her intent to return to the home. If s/he is able to form an intent but unable to express it, determine his/her intent through other available evidence. Other evidence includes:
  - a. His/her written statements.
  - b. His/her oral statements made before incapacitation. Accept reports of these statements made by family members.
  - c. Accept reports of his/her intent made by an authorized representative (IMM, Ch. I, Part A, 18.3.0). If there is no evidence s/he disagrees with the statement, accept the authorized representative's statement.

If s/he appears unable to form an intent but has not been judged incompetent by a court, accept a family member's statement as evidence of his/her intent.

If s/he has been judged incompetent, accept the intent statement of his/her guardian. Use the guardian's intent statement even if it differs from the client's.

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#### 11.8.1.3 *Exempt Home Property (cont.)*

If neither condition #1 nor #2 is met, the property is no longer the principal residence and becomes non-home property.

#### 11.8.1.4 *Sale of Home Property*

Money from the sale of real property is an asset. When the property that is sold is a homestead, disregarded the proceeds if they are placed in an escrow account and used to purchase another home within three months.

#### 11.8.1.5 *Life Estate*

A life estate gives a person certain property rights for his/her lifetime. S/he has the right to possess and use it, and to make money from it. S/he also has the right to sell his/her interest in it.

The person does not have the title to or the right to sell the property. S/he usually may not pass it on to his/her heirs as an inheritance. S/he is liable for all costs of the property such as taxes and repairs, unless s/he moves off the property or the will (or deed) states otherwise.

When property is conveyed to one person for life (life estate holder) and to another person (the remainder man), both a life estate interest and a remainder interest are created. When the life estate holder dies, the remainder man holds full and unconditional title to the property and can dispose of it as s/he wishes (fee simple).

A life estate or remainder interest in homestead or non-homestead property is an unavailable asset. To determine the value of a life estate or remainder interest:

1. In the Life Estate and Remainder Interest Table (30.2.0) find the line for the person's age as of the transaction date.
2. Multiply the figure on that line in the Life Estate or Remainder column times the fair market value to determine the value of the life estate or remainder interest.

When a life estate holder moves off the property and the property is rented, follow the instructions in 15.5.3 for counting the rental income.

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### 11.9.0 EBD Non-Home Property Exclusions

Non-home property is any countable asset other than a homestead. See 14.4.0 for divestment. Exclusions of non-home property in EBD cases include:

1. Real property that is listed for sale with a realtor at a price consistent with its fair market value.
2. Property excluded regardless of value or rate of return. Property used in a trade or business is in this category. See 22.3.1.1.
3. Property excluded up to \$6,000, regardless of rate of return. This category includes non-business property used to produce goods or services essential to self-support. Any portion of the property's equity value in excess of \$6,000 is not excluded.

Non-business property essential to self-support can be real or personal property. It produces goods or services essential to self-support when it is used, for example, to grow produce or livestock solely for personal consumption, or to perform activities essential to the production of food solely for home consumption.

4. Property excluded up to \$6,000 if it is **non-business** property that produces a net annual income (either cash or in-kind income) of at least 6%.

If the excluded portion produces less than a 6% return due to circumstances beyond the person's control (e.g., crop failure, illness), and there is reasonable expectation that it will again produce at least a 6% return, continue to consider the first \$6,000 in equity as excluded.

### 11.10.0 Indian Lands

Exclude a Native American's interest in or possession of land which is held by an individual Native American or tribe, and which can only be disposed of with the approval of other individuals, the tribe, or the Federal government.